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5. Evidence (§ 461*)—Parol Evidence—Ambiguous Contract.—A contract for the construction of sewers, which fixes the price for bricks “furnished and laid in sewer” at a specified sum per 1,000, is ambiguous as to how the quantity is to be determined, whether by actual count or by measurement after laying; and parol evidence is admissible to explain its terms and to show the custom of trade.

[Ed. Note.—For other cases, see Evidence, Dec. Dig. § 461.* 13 Va.-W. Va. Enc. Dig. 414.]

6. Municipal Corporations (§ 370*)—Contracts—Rights of Contractor.—A contract for the construction of a sewer fixed the price “for bricks furnished and laid in sewer” at a specified sum per 1,000, and provided that the city engineer should decide all dispute involved in the construction of the contract, amount, and value of the work, and materials furnished. There was no legal custom entering into the contract, but the usage of trade was to measure the work and allow a designated number of bricks to a cubic foot and pay accordingly. Held, that the contractor was entitled to compensation at the specified rate per 1,000 bricks, ascertained by measurement of the work, allowing a specified number of bricks to a cubic foot, though the city engineer determined that the contractor should be paid for the bricks ascertained by actual count.

[Ed. Note.—For other cases, see Municipal Corporations, Dec. Dig. § 370.* 13 Va.-W. Va. Enc. Dig. 414.]

Judgment modified and affirmed. All the judges concur.

TAYLOR *v.* COMMONWEALTH.

March 18, 1909.

[63 S. E. 1079.]

Poisons (§ 5*)—Unlawful Sale—Criminal Prosecution—Sufficiency of Evidence.—In a prosecution for having in his possession cocaine with intent to sell, etc., the same in violation of Acts 1908, p. 378, c. 255, evidence held insufficient to sustain conviction.

[Ed. Note.—For other cases, see Poisons, Dec. Dig. § 5.* 4 Va.-W. Va. Enc. Dig. 14, 15.]

Judgment reversed. All the judges concur.

COMMONWEALTH *et al.* *v.* SCHOOL BOARD OF CITY OF NORFOLK *et al.*

March 11, 1909.

[63 S. E. 1081.]

1. Schools and School Districts (§ 75*)—School Furniture—Selection—Powers of State Board.—Const. 1902, § 136 (Code 1904, p. ccxlv),

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

providing that each county, city, town, if a separate school district, and school district, may raise money by taxation to be expended by the local school authorities for such schools as in their judgment the public welfare requires, does not prohibit the General Assembly from conferring on the state board of education power to select school furniture for all public schools in the state.

[Ed. Note.—For other cases, see *Schools and School Districts*, Dec. Dig. § 75.* 12 Va.-W. Va. Enc. Dig. 86, 87.]

2. Constitutional Law (§ 48*)—Statutes—Constitutionality—Determination.—Courts can only declare an act of the General Assembly unconstitutional when it so clearly violates the Constitution as to leave no doubt in the mind of the court.

[Ed. Note.—For other cases, see *Constitutional Law*, Cent. Dig. § 46; Dec. Dig. § 48.* 3 Va.-W. Va. Enc. Dig. 163, 164.]

3. Schools and School Districts (§ 75*)—School Furnishings—Selection—Statutes—Construction—"Select"—"Provide."—Act March 15, 1906, p. 432, c. 248 (Code 1904, § 1433), defining the powers and duties of the state board of education, was amended so as to declare that such board should "select" text-books, school furniture, and educational appliances for the public schools of the state, etc. Two days after, at the same session, Code 1904, § 1538, was amended by Acts 1906. pp. 513, 515, c. 293, and re-enacted, subsection 10 of which declared that the school board of a city should have power, and that it should be its duty, to "provide" schoolhouses with proper furniture and appliances, and to care for and manage and control the school property of the city. Held, that such acts were in *pari materia*, and should be construed together, and that under them a city school board had only power to provide such school furniture for the public schools of the city as had been selected by the state board of education; the words "select" and "provide" in such provisions not being synonymous, the word "provide" being used in the sense of "to furnish or supply," while the word "select" means "chosen" or "picked out."

[Ed. Note.—For other cases, see *Schools and School Districts*, Dec. Dig. § 75.* 12 Va.-W. Va. Enc. Dig. 86, 87.

For other definitions, see *Words and Phrases*, vol. 6. pp. 5747, 5748; vol. 7, p. 6401; vol. 8, p. 7797.]

Judgment reversed. Keith, P., absent.

COMMONWEALTH *v.* MANCHESTER & RICHMOND FREE
BRIDGE CO. et al.

March 17, 1909.

[63 S. E. 1083.]

Corporations (§ 38*)—Nature.—The Manchester & Richmond Free

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.